rate consideration. Now the judiciousness and sagacity of this passage are indisputable but then with respect I am inclined to feel that it has been somewhat erroneously applied to the present case. The passage to which counsel referred me falls under the second heading of Part I dealing with Interpretation of Statutes. In the short passage, as I understand it, the author was discussing the doctrine of purposive approach in *interpretation of statutes* as will promote the general legislative purpose. The phrase 'so as to do what Parliament would have done' appearing in the last sentence could only mean that the subject-matter in discussion was the statute, the creation of Parliament, and not agreements or contracts which are the creation of individuals.

Interpretation of contracts, however, is subject to different rules. I do not think I can do better than borrow the words of Lord Denning in the same book at page 32 to elucidate the principle involved in the construction of contracts in which his Lordship said:

"The construction of contracts is virtually a different subject. When construing a statute or a will, you are considering the intentions of one body only — be it Parliament or a testator. When construing a contract, be it in writing or by word of mouth, you are considering the intentions of two parties — who have agreed together on the terms that shall bind them. As the maxim goes, there is *consensus ad idem*. But in discovering that intention, you are not to look into their actual minds. The parties are not even allowed to give evidence as to what they intended — except in special cases where there is a claim for rectification. You have to go by the outward expression of their intentions — as conveyed by the words set out in writing or by the spoken words they used. So once again we come back to the meaning of the words."

It is my opinion that not only the doctrine of 'purposive approach' but also of 'presumed intent', as discussed in the book, does not arise in this case, as the latter referred to a matter which the parties did not envisage. The parties were aware of the amount of the rent and the assessment and they had made a stipulation as to what the future rent is to be in the event of increase in assessment.

Counsel for the defendant attempted to introduce evidence of the intention behind his own drafted agreement which obviously offends the rule that no parol evidence is admissible to alter or vary the terms of a contract. To my mind, there is no apparent ambiguity to the clause 'in proportion to the increase'. A thing is said to be in proportion to another when there is a comparative relation or ratio between the two. The relationship is such that any increase or decrease in one will involve a relative adjustment of the other so as to maintain the existing harmony between them. As an illustration, if we say 2 in proportion to 3, we mean for every 2 parts there shall be a corresponding 3 parts of the other, or in figurative mathematical ratio "2: 3". Any increase of the first figure, i.e. the 2, let us say, to 4 would require the corresponding adjustment of the 3 to 6 in order to retain that constant relativity.

In our present case the two amounts, which are in proportion to one another, are the 'rent' and the 'assessment' and not the 'yearly rent' in proportion to the 'monthly rent'. Therefore any increase in the assessment must involve a relative increase in the rent. As the assessment had been increased from $86.40 to $129.60, i.e. by addition of 50% of $86.40, the rent has to be increased likewise by the addition of a further $70, i.e. 50% of the former amount of $140, making it $210.

On the whole I consider that on the true construction of the agreement, clause 5 which reads "In the event of the assessment being increased by the Government during the unexpired term of the lease the lessee agrees and undertakes to increase the rent payable to the lessor in proportion to the increase of the assessment" meant that the lessee had stipulated to pay the lessor an increase in the rent in the same ratio as the increase in the assessment, i.e. by 50%. As the assessment had been increased by 50%, the rent payable by the lessee would similarly appreciate from $140 per month to $210 per month.

Order accordingly.

Solicitors: *H.B. Ball; D.A. Devadason.*

GOVERNMENT OF MALAYSIA v. ADNAN BIN AWANG & ORS.

[O.C.J. (Wan Yahya J.) March 17, 1980]
[Malacca — Civil Suit No. 154 of 1975]

Contract — Action for breach of — Scope of — Contracts Act, 1950, s. 62.

Contract — Subsequent contract — Principle of novation — When applicable.

The first defendant in this case entered into an agreement with the plaintiff by the terms of which he was to be provided with a course of training for a period of 2 years. In return, the first defendant agreed to serve the plaintiff if so requested within 12 calendar months after the completion of such course for a period of 5 years as a teacher. The second and third defendants acted as sureties to the said agreement.

The first defendant had successfully completed his course of training and was appointed as an attachment teacher with the Ministry of Education on January 1, 1972. On October 2, 1972 he was offered by the said Ministry a temporary post of Grade C teacher. This was followed by a formal offer of permanent and pensionable commission. One of the conditions stipulated in both offers was that the service of the first defendant may be terminated by one month's notice or by the payment of one month's salary in lieu of notice. On November 12, 1972, the first defendant accepted the first offer made by the Ministry of Education. However, on November 29, 1972 before the offer by the Public Service Commission was made, the first defendant gave a month's notice to resign his post. His application to resign was refused and returned to him.

On January 1, 1973 when school re-opened, the first defendant was absent. He had, by then, taken up his new appointment with the Armed Forces. After various correspondence notices of demand were made to all three defendants to repay the plaintiff a sum of $5,400. Consequently there were several correspondence between the parties. The plaintiff on October 20, 1978 wrote to the first defendant stating the acceptance of the first defendant's original offer to pay $50 per month provided he would agree to a consent judgment being entered against him for the sum claimed with interest. The first defendant disputed this resulting in the present action.

The defendants relied on the clause enabling each party to terminate the first defendant's service by one month's notice in both the offers made on October 2, 1972 and on May 28, 1973. By the inclusion of the said clause, they claimed that the plaintiff had substituted the original agreement with a new one and that by reason of section 62 of the Contracts Act, the defendants need not perform their obligations under the original contract.

Held, allowing the plaintiff's claim: (1) for the operation of section 62 of the Contracts Act, 1950, the party claiming such a relief must not only show the intention to novate or that the terms of the subsequent contract are so inconsistent with the former one as to imply that intention but he must also prove that all the parties to the former contract have consented to the terms of the subsequent one;

(2) for the principle of novation to apply there must be mutual consent of all the parties concerned;

(3) in this case whatever subsequent transactions between the parties were not carried out with the knowledge or consent of the second and third defendants. The defendants were therefore disentitled to the defence under section 62 of the Contracts Act.

Cases referred to:

(1) *T.M. & Co.* v. *H.I. Trust* A.I.R. 1969 Cal. 238, 244.

(2) *K. Appukuttan Panicker & Anor.* v. *S.K.R.A.K.R. Athappa Chettiar & Ors.* A.I.R. 1966 Ker. 303.

CIVIL SUIT.

Stanley Isaacs (Federal Counsel) for the plaintiffs.

F.H. D'Cruz for the defendants.

Cur. Adv. Vult.

Wan Yahya J.: This is an action for breach of contract brought by the Government of Malaysia against one Capt. Adnan bin Awang Long, formerly a teacher employed by the Ministry of Education and now serving as an officer in the Malaysian Armed Forces.

The undisputed facts may be summarised briefly as follows: On April 19, 1970 Adnan bin Awang Long, who is the 1st defendant herein, as principal and Haji Awang Nong bin Haji Yaakub and Ibrahim bin Ismail, the 2nd and 3rd defendants respectively as sureties, entered into an agreement with the Government by the terms of which he was to be provided with a course of training for a period of 2 years. In return the 1st defendant promised to serve the Government if so requested within 12 calendar months after the completion of such course, for a period of 5 years as a teacher in any post consistent with the qualification he would by then achieve. The 1st defendant successfully completed his course of training and was subsequently appointed as an attachment teacher drawing a salary of $230 per month under the Ministry of Education on January 1, 1972 (Exhibit P2). On October 2, 1972 the Ministry of Education offered him a temporary post of Grade C teacher — a post consistent with his qualification and entitling him to a salary of $310 per month (Exhibit P3). This was followed by a formal offer of permanent and pensionable appointment made by the Public Service Commission (Exhibit D13). One of the conditions stipulated in both offers was that the service of the 1st defendant may be terminated by one month's notice or by the payment of one month's salary in lieu of notice. The 1st defendant accepted the first offer made by the Ministry of Education on the usual acceptance form dated November 12, 1972 (Exhibit P4). However, on November 29, 1972, before the offer by the Public Service Commission was made, the 1st defendant gave a month's notice to resign his post (Exhibit D17). One week before this he had through a lawyer in Johore Bahru requested the Ministry to release him from his obligations under the agreement. The application to resign his post was refused promptly and returned to the 1st defendant with a terse note to the headmaster who forwarded the application (Exhibits D15, D15A).

On January 1, 1973 when the school reopened, the 1st defendant was absent, having by this time taken up his new appointment with the Armed Forces. After various correspondence notices of demand were made to all the three defendants to repay the Government a sum of $5,400. On November 11, 1974 the 1st defendant, having by this time received a notice of demand from the Attorney-General's Chambers, wrote to the Ministry of Education pleading that he be allowed to pay at $50 per month (Exhibit P9). Some haggling presumably followed and by a letter dated February 25, 1975 the Ministry indicated that they would only accept instalments of $150 per month towards the amount claimed by them (Exhibit P11). There was a long lapse of correspondence and finally on October 20, 1978 a letter was written to the 1st defendant demanding that they would accept the 1st defendant's original offer to pay $50 per month provided he would agree to a consent judgment being entered against him for the sum claimed with interest (Exhibit D11). The 1st defendant refused to comply with this request resulting in the present action.

At the hearing before this court it was conceded by the defence that the plaintiff had fully fulfilled its obligations under the agreement but they contended that by incorporating the clause enabling each party to terminate the 1st defendant's service by one month's notice in both the offers made on October 2, 1972 (Exhibit P3) and May 28, 1973 (Exhibit D13), the plaintiff had substituted the original agreement (Exhibit P1) with a new one and that by reason of section 62 of the Contracts Act the defendants need not perform their obligations under the original contract.

Section 62 of the Contracts Act reads:

"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original need not be performed."

For the operation of this section, as I understand it, the party claiming such a relief must not only show the intention to novate or that the terms of the subsequent contract are so inconsistent with the former one as to imply that intention but he must also prove that all the parties to the former contract have consented to the terms of the subsequent one. In *T.M. & Co.* v. *H.I. Trust*[1] it is stated:

"Mr. Mukherjee in support of this point relied on the statement of law in 8 Halsbury, 3rd Edition, page 258, Article 451 that a party to a contract cannot transfer his liability thereunder without the consent of the other party and such liabilities can only be transferred by a tripartite agreement which in such cases will amount to novation. That principle is well settled by numerous decisions such as *Khardah Co. Ltd.* v. *Raymon & Co. (India) Private Ltd.*, A.I.R. 1962 S.C. 1810 at p. 1817."

Similarly in *K. Appukuttan Panicker & Anor.* v. *S.K.R.A.K.R. Athappa Chettiar & Ors.*[2] it was held that it was essential for the principle of novation to apply that there must be the mutual consent of all the parties concerned.

The parties to the first contract in our present case are the Government of Malaysia and the 1st, 2nd and 3rd defendants, but subsequent contracts (Exhibits P3 and D13), which the defendants claim to contain

terms releasing them from their former obligations, were in each case made only between the Government and the 1st defendant, Adnan bin Awang Long. It is obvious that whatever subsequent transactions between the parties were not carried out with the knowledge or consent of the 2nd and 3rd defendants.

I hold that as all the four parties to the 1st contract had not agreed to alter, substitute or rescind it, the defendants are disentitled to the defence under section 62 of the Contracts Act.

There shall be judgment for the plaintiff for $5,400 and costs.

Claim allowed.

Solicitors: *Vohrah & Tan Chee Lan.*

ERICO ESTATES SDN. BHD. & ANOR. v. THE REGISTRAR OF TITLES, KEDAH

[O.C.J. (Syed Agil Barakbah J.) March 31, 1980]

[Alor Star — Originating Motion No. 8 of 1979]

Land Law — Registrar's refusal to accept transfer for registration — Appeal — Whether land "estate land" — Meaning of "contiguous" — National Land Code, s. 214A(11).

Interpretation — Construction of statute — Object of Act, subject matters and surrounding circumstances.

This is an appeal against the respondent's decision in rejecting the Instrument of Transfer of agricultural land situate in Kedah made between the first and the second appellants. The respondent had rejected the said transfer on the ground that the said land is "estate land" as defined under section 214A of the National Land Code and as such the approval of the Estate Land Board for the transfer was necessary.

The main question in the appeal is whether the said land was "estate land".

Held, allowing the appeal: (1) in construing an Act of Parliament one must look at the object of the Act, the subject matter of the section, the surrounding circumstances of the case and construe the words as a whole;

(2) the object of section 214A of the National Land Code is to prevent fragmentation of estate land;

(3) the word "contiguous" in section 214A(11) ought to be construed in line with the intention of Parliament, i.e. in its ordinary and strict meaning of "touching" and not "neighbouring";

(4) in the circumstances, the Registrar had made a wrong decision. The land in question was not estate land and the appellant need not obtain prior approval of the Board.

Cases referred to:-

(1) *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee; Pierce* v. *Wirral Assessment Committee etc.* [1931] 2 K.B. 21.

(2) *Haynes* v. *King* [1893] 3 Ch. 439 @ 448.

ORIGINATING MOTION.

A. Jayadeva for the appellants.

Abu Bakar bin Awang (Legal Adviser) for the respondent.

Syed Agil Barakbah J.: This is an appeal against the decision of the Registrar of Titles Negeri Kedah dated February 27, 1979 rejecting the Instrument of Transfer of agricultural land comprised in Surat Putus Besar No. 61859 Portion No. 282 situate in the Mukim of Padang China, in the District of Kulim, Kedah containing an area of 124 relongs 70 jembas 00 sq. ft. (88 acres 1 rood 05 poles) made between the First and the Second Appellants.

Pursuant to an agreement of sale the first appellant executed the said instrument in Form 14A of the National Land Code (hereinafter called "the Code") dated January 4, 1979 in respect of the said land, had it duly stamped and presented it to the Registrar for registration. The latter however rejected the said transfer on the ground that the said land is "estate land" as defined under section 214A of the Code and as such the approval of the Estate Land Board, for the transfer is necessary.

The main question in this appeal is whether the said land is "estate land".

The section states:—

"214A. (1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed off in any manner whatsoever, to two or more persons unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as the 'Board') established under subsection (3).

(2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board."

The other subsections deal with the establishment of the Board, the power of the Board to approve or refuse an application, to call any person to give a statement or produce any document before making a decision and the power of the State Authority to confirm or reverse the decision of the Board on appeal.

Subsection (11) provides:

"For the purpose of this section 'estate land' means any agricultural land held under one or more than one title, the area or the aggregate area of which is not less than 500 acres and the lots constituting such area are contiguous."

Under subsection (11) above, in order to be classified as "estate land", the following ingredients are necessary:—

(1) the land must be agricultural land;

(2) it must be held under one or more than one title;

(3) the area or the aggregate area of such land must not be les than 500 acres; and

(4) the lots constituting such area are contiguous.

From the affidavit of Chang Tiong How, the managing director of the first appellant, the company is the registered owner of five separate lots of agricultural lands in the same locality in five separate titles comprising 1,038 acres or thereabout. Among them are lot No. 282, the land in dispute, and Lot No. 279, which is 827 acres in area. Both are separated by state land forming the main road Kelang Bahru/ Bagan Sena, Kulim, Kedah. The other three lots are separated by other alienated lands belonging to other registered proprietors.

The first three ingredients of subsection (11) are fulfilled.

The remaining question therefore touches the fourth limb i.e. whether the two lots 282 & 279 are contiguous. The National Land Code does not define the word "contiguous" but under section 146 which